

**REPORT - PLANNING COMMISSION MEETING
November 18, 2004**

Project Name and Number: FLOOR AREA RATIO (FAR) REVIEW PROCESS - Citywide – (PLN2004-00003)

Applicant: City of Fremont

Proposal: To consider a zoning text amendment (ZTA) to amend the approving agency for review of requests relating to floor area ratio (FAR) increases and to clarify the materials needed to accompany such a request. The intent of these changes is to streamline and clarify the processing requirements in order to provide a faster response to the development community. Currently a request is considered by the Community Development Director, Planning Commission or City Council based on the amount of increase over the threshold. The ZTA would amend the current language to have the Community Development Director as the primary decision maker with ability to refer to the Planning Commission or City Council. The zoning text amendment proposes language changes to Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code specifically Section 8-22140.5 of Article 21.3 (Special Provisions Applying to Miscellaneous Uses) and Article 25.2 (Findings).

Recommended Action: Recommend to City Council

Location: Citywide

Assessor Parcel Number(s): N/A

Area: N/A

Owner: N/A

Agent of Applicant: N/A

Consultant(s): N/A

Environmental Review: A Negative Declaration has been prepared and circulated for the project.

Existing General Plan: Office Commercial Center, Neighborhood Commercial Center, Community Commercial Center, Central Business District, Thoroughfare Commercial Center, High Volume Commercial, Light Industrial, Restricted Industrial, or General Industrial General Plan designations within the City of Fremont

Existing Zoning: C-O Administrative Office District, C-N Neighborhood Commercial District, C-C Community Commercial District, C-B-D Central Business District, C-T Thoroughfare Commercial District, C-R Regional Commercial Districts, I-L Light Industrial District, I-R Restricted Industrial District, G-I General Industrial Districts, and P Planned Districts with underlying land use of the before mentioned districts.

Chapter 2 (Zoning) of Title VIII (Planning and Zoning) of the Fremont Municipal Code specifically Section 8-22140.5 of Article 21.3 (Special Provisions Applying to Miscellaneous Uses) and Article 25.2 (Findings).

Existing Land Use: N/A

Public Hearing Notice: Public hearing notification is applicable. A Display Ad and Public Hearing Notice were delivered to The Argus on November 1, 2004 to be published by November 4, 2004.

Executive Summary: The Zoning Text Amendment (ZTA) will simplify the process for the review of a request for Floor Area Ratio (FAR) increases by reducing the number of reviewing agencies from three (i.e., Assistant City Manager as the Community Development Director, Planning Commission, or City Council depending on the amount of the increase) to one (i.e., Community Development Director with referral ability to Planning Commission or City Council) and clarifying the type of information needed for an FAR increase application. If the changes proposed in the ZTA are adopted the Community Development Director would still be required to make the same findings as currently required for the approval of a FAR increase. The findings will be used to determine if an FAR increase would cause any impacts. The ZTA also includes language which allows the Director to refer proposals which are of greater concern to the appropriate agency.

Background and Previous Actions: Floor area ratio (FAR) thresholds were introduced with the adoption of the 1991 General Plan on May 7, 1991 and incorporated into the Zoning Ordinance on September 21, 1993 to manage future growth specifically in the commercial and industrial areas. Since the inception of the FAR thresholds, the number of applications for FAR increases has ranged from as low as one application in a year to as many as twenty-two. The reviewing agency for the majority of the applications has been the Planning Commission or City Council. The average preparation time for an application before the Planning Commission or City Council is approximately two to three months. During this time, the development community has expressed some concern regarding the length of time and process required for FAR increase requests. To address these concerns, this Zoning Text Amendment was added to the Planning Division's 2004 Work Plan. On October 12, 2004, the City Council reviewed three alternatives which are enumerated in section "October 12, Meeting – City Council Direction" of this report. At that meeting, the City Council directed staff to prepare a Zoning Text Amendment which would allow the Community Development Director to review all FAR increase requests and to clarify the requirements for processing such a request.

FAR Ratios by Zoning District: The following chart outlines the FAR thresholds for the commercial and industrial zoning districts. Except for mixed-use developments in commercial districts or warehouses in industrial districts, the FAR threshold is applied uniformly regardless of use. The reason for higher FAR thresholds for those uses is that mixed-use developments promote reduction of trips between residence and commercial services, and warehouses typically have a low traffic volume to floor area ratio. Warehouses are defined as buildings with 90 percent of the floor area devoted to storage and warehouse purposes. In order to encourage a higher development intensity in Fremont's Core Area (i.e., the Central Business District), a higher FAR is permitted if the site is located within a half-mile of BART. Therefore, due to the nature of mixed-uses developments and warehouses and proximity to BART, it was determined that a higher FAR threshold was warranted in those instances.

ZONING		FAR THRESHOLD
C-O	All areas	0.3
	Mixed Use Development	0.6
C-N	All areas	0.3
	Mixed Use Development	0.6
C-C	All areas	0.5
	Mixed Use Development	1.25
C-B-D	Within ½ mile of BART Station	0.8
	Mixed Use Developments – near BART	2.0
	Other areas	0.5
	Other areas: Mixed Use Development	1.25
C-T	All areas	0.3
	Mixed Use Development	0.6
C-R	All areas	0.25
I-L	All areas	0.35
	Warehouse	0.45
I-R	All areas	0.35
	Warehouse	0.45
G-I	All areas	0.35
	Warehouse	0.45

Project Description: The proposal is this zoning text amendment (ZTA) is to assign the role of reviewing agency for floor area ratio (FAR) increase requests primarily to the Community Development Director. Currently FAR increases are considered by the Community Development Director, Planning Commission or City Council depending on the amount of increase requested over the FAR threshold. The ZTA would amend the current language to have the Community Development Director as the primary decision maker with the ability to refer to the Planning Commission or City Council. A proposal would be referred when it has the potential to adversely affect traffic level of service or the character/scale of the surrounding area. In addition, the ZTA includes language to clarify the materials needed to accompany such a request. The intent of these changes is to streamline and clarify the processing requirements in order to provide a faster response to the development community. Findings currently used to determine whether or not the increased floor area should be granted will still be required to be made if the ZTA is approved. These changes, if adopted, would only affect FAR increase requests for projects involving only solely commercial or industrial uses. Regulations for FAR increases associated with mixed-use developments would remain unchanged.

Project Analysis: Currently, the reviewing agency for a FAR increase is determined by the amount of increase requested over the districts' threshold. Increases up to 5% are reviewed by the Community Development Director. If the increase is over 5% and up to 15%, the Planning Commission is the reviewing agency. All requests over the 15% are reviewed by the City Council. However, if an FAR increase involves a mixed-use development, then the reviewing agency is the City Council. If the structure is located in the Community Commercial District and is within the historic Mission San Jose or Niles districts, the Irvington Redevelopment Area or Centerville Specific Plan areas, then the Community Development Director is the reviewing agency provided that sufficient parking can be provided for the site.

Under this proposed ZTA, all requests would be reviewed by the Director. This would enable the average processing time to be reduced since a shorter and more streamlined report could be prepared. This change could potentially reduce the processing time by 30% or more. In addition, having one reviewing agency rather than three would simplify the review process for new applicants. The Director will have the ability to refer requests which may have the potential to adversely affect traffic level of service or the character/scale of the surrounding uses to the Planning Commission or the City Council. It also clarifies that FAR increase requests involving mixed-use developments are to be reviewed by the City Council.

The findings currently required for FAR increases would be unaffected and would still be required to be made before an increase can be approved. If there is a concern regarding the increase request, the Director would have the option to refer the matter to the Planning Commission or City Council.

Mixed-use development: In July 6, 2004, threshold limits specific to mixed-use developments were adopted as part of the overall regulations for mixed-use projects. The mixed-use ordinance also established that requests for FAR increases involving mixed-use developments would require submission under a Planned District and are subject to the review and recommendation by the Planning Commission to the City Council for approval. These requirements would not be affected by this proposal.

Clarification on submittal documents: Requests for FAR increases are processed as a Finding application. However, Finding applications are also used for review of determinations on land use, parking ratio, setbacks, and building height. The application requirements for a Finding application are specified in Article 25.2 (Findings) and are focused more towards analysis of these types of issues rather than FAR increases. In order to provide clear direction as to what is needed to support a FAR increase request, the ZTA includes language cross-referencing to the application requirements set forth in Section 8-22140.5 (Floor area ratio (FAR), Increases in) of Article 21.3 (Special provisions Applying to Miscellaneous Uses).

Findings required for FAR Increases: The Zoning Ordinance specifies that the decision of the approving agency must be based on certain findings. The following summarizes these findings required for wholly commercial and industrial developments:

1. Will not be detrimental to the area streets, sewer lines and/or other public services or to the lighting, air quality or privacy of any other properties in the vicinity of the structure;
2. Will not be used to create a more intensive use than the use specified; and,

3. One or more of the following:
 - a. Would provide extraordinary benefits to the City;
 - b. Would allow the project to be designed in such a manner which would mitigate its impacts on surrounding property more effectively than the FAR specified under the district regulations;
 - c. In order to accommodate a use, unique building requirements have imposed which require an increase in the FAR over the threshold specified under the district regulations; and/or,
 - d. Additional development potential has been transferred within a project from one parcel to another in the same project. Adequate guarantees such as a deed restriction approved by the City Attorney are in place to insure the overall project FAR will not be exceeded.

Conclusion: The changes proposed under this ZTA would greatly simplify who the reviewing agency would be for FAR increase requests. It would establish criteria for which the Community Development Director could refer a request to the Planning Commission or City Council. In addition, it clarifies what type of documents would be needed to accompany such a request. Overall, the ZTA would achieve the main goal of streamlining the review process for FAR threshold increases while maintaining the primary interest of the review process (i.e., determination whether or not the FAR increase creates any undue impacts to the community and the surrounding area).

General Plan Conformance: The proposed ZTA will affect parcels with a Central Business District, Community Commercial Center, Neighborhood Commercial Center, Thoroughfare Commercial Center, High Volume Commercial, Office Commercial Center, Light Industrial, Restricted Industrial, or General Industrial General Plan designations within the City of Fremont where an application for an increase in floor area ratio is being requested. Comments responding to General Plan conformity follow the General Plan statements.

- **Policy LU 2.2:** Floor Area Ratio (FAR) shown on Table 3-5 are thresholds which shall be applied to all commercial projects. Floor Area Ratios are the ratio of gross building area (exclusive of parking) to net lot area. Thresholds indicate the FAR allowed under conventional development. A higher FAR may be granted at the discretion of the City Council if a project meets one or more of the following criteria. Development policies shall be created to provide examples of how these criteria can be met.
 - Extraordinary benefits to the City.
 - Unique circumstances of the project which would reduce its impacts in comparison to other projects (e.g., less than normal traffic generation)
 - Transfer of development right between parcels of land in the vicinity of the project

Implementation 1: The zoning ordinance for commercial uses shall incorporate Floor Area Ratios.

Implementation 2: The zoning ordinance shall be modified to define transfer of development right procedures and conditions.

Comment: Since the ZTA proposes to simplify the number of reviewing agencies governing FAR increase requests and to clarify the submittal requirements for such a proposal, the ZTA will not affect the requirements set forth in the General Plan regarding FAR increase requests. Review of a FAR increase proposal would still be subject to a determination whether or not the above criteria can be met.

- **Policy LU 3.6:** Floor Area Ratio (FAR) shown on Table 3-6 are thresholds which shall be applied to all industrial projects, at the time of project construction. Floor Area Ratios are the ratio of gross building area (exclusive of a parking structure) to net lot area. Thresholds indicate the allowed FAR under conventional development. A higher FAR may be granted at the City's discretion based on one or more of the following criteria. Development policies shall be created to provide examples of how these criteria can be met.
 - Extraordinary benefits to the City.

- Unique circumstances of the project which would reduce its impacts in comparison to other projects (e.g., less than normal traffic generation)
- Unique building requirements of a particular industrial use
- Transfer of development right between parcels of land in the vicinity of the project

Implementation 1: The zoning ordinance for industrial uses shall incorporate Floor Area Ratios.

Implementation 2: Because of the higher permitted FAR for warehouse buildings, standards shall be established to ensure that such buildings are developed and maintained as warehouses. Until standards are adopted, warehousing shall be defined as buildings with 90 percent of the floor area devoted to storage and warehouse purposes.

Comment: As stated above under this section, the changes proposed under this ZTA would continue to carry out the intent of the General Plan and its criteria for FAR increase requests.

October 12, Meeting – City Council Direction: Three alternatives were presented to the City Council during its regular meeting on October 12, 2004. In the first alternative, the Community Development Director would review all FAR increase requests with the ability to refer such requests to the Planning Commission or City Council. The second alternative involved modifying threshold limits for the reviewing agency by increasing the limits reviewed by the Director from up to 5% to a upper limit of 15%, the parameters for Planning Commission review would be revised from a 5%-15% range to a 15%-35% range; and, City Council would review all those requests exceeding 35%. In the third alternative, established criteria and reviewing agency or person based on use of FAR. Under this alternative, the Community Development Director would review all FAR increases where the additional floor area is used for specific uses known to be low traffic generators. Those requests which involve uses not typically considered low traffic generators would continue to be processed in accordance with the existing threshold limits. The City Council, on consent, unanimously directed staff to proceed with Alternative 1 (Director to review all requests of FAR increases).

Environmental Analysis: A finding is proposed that this project will not have a significant effect on the environment. The proposed project is an amendment of existing ordinance requirements for a change in the reviewing agency and clarification of application submittal process for an FAR increase. No significant vegetation, wildlife, or natural resources will be displaced, destroyed, or removed by the proposed development. Future development subject to the proposed ordinance language will be required to comply with the City codes and policies, as well as with various county and state agency regulations. Review of these future projects will be required to undergo environmental review as required by California Environmental Quality Act (CEQA). As such, a Negative Declaration is proposed for the project.

Response from Agencies and Organizations: No comments have been received from any agency or organization regarding this proposal.

Enclosures: Exhibit “A” (Zoning Text Amendment)
Initial Study and Draft Negative Declaration with accompanying Certificate of Fee Exemption
October 12, 2004 City Council Report and Minutes
Informational Exhibit (Floor Area Ratio illustration)

Exhibits: Exhibit “A” Zoning Text Amendment

Recommended Actions:

1. Hold public hearing.
2. Recommend that the City Council find the Initial Study has evaluated the potential for this project to cause an adverse effect -- either individually or cumulatively -- on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources.

3. Recommend that the City Council approve Negative Declaration with accompanying Certificate of Fee Exemption and find it reflects the independent judgment of the City of Fremont.
4. Recommend that the City Council find that PLN2004-00003 is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use Element as enumerated within the staff report.
5. Recommend that the City Council find the public necessity, convenience and general welfare require the adoption of this Zoning Text Amendment PLN2004-00003 because the proposed text changes are needed to streamline the review process and to clarify the submittal requirements, as shown in Exhibit "A".
6. Recommend PLN2004-00003 to the City Council in conformance with Exhibit "A" (Zoning Text Amendment).

EXHIBIT "A"
PLN2004-00003
FLOOR AREA RATIO (FAR) REVIEW PROCESS AMENDMENT

Note: Under PROPOSED ORDINANCE, new language proposed to be added is underlined. Language proposed to be removed is ~~struck~~.

Section 1.

Section 8-22140.5 of Article 21.3 (Special Provisions Applying to Miscellaneous Uses), Chapter 2 (Zoning), Title VIII (Planning and Zoning of the Fremont Municipal Code) is proposed to be amended to read as follows:

Sec. 8-22140.5. Floor area ratio (FAR), increases in.

- (a) *Application requirements.* Applications for increases in FARs beyond the maximum listed for commercial and industrial districts shall be processed as a finding. The application shall be accompanied by the following documents:
- (1) Plans or documents showing the effect of the proposed FAR increase upon properties located within a three hundred foot radius of the project site relative to shadow, wind flow and impact upon public services.
 - (2) A detailed statement describing the justification for the increased FAR.
 - (3) Where an increase in FAR may allow for a higher intensity of use, a traffic study may be required in order to analyze the impact to city streets within the vicinity of the project. If a traffic study is required, the traffic study is to be prepared under the auspices of the city and paid for by the applicant.
 - (4) Any other evidence needed to support the findings required under paragraph (b) below.
- (b) *Findings.* The decision of the approving agency shall be based on the following findings. Evidence to support the findings shall be included in the project record.
- (1) An increase in the FAR will not be detrimental to the area streets, sewer lines and/or other public services or to the lighting, air quality or privacy of any other properties in the vicinity of the structure.
 - (2) There will be a provision in place guaranteeing the increased FAR will not be used to create a more intensive use than the use specified by the approved finding.
 - (3) In addition, one or more of the following findings shall be considered, if appropriate:
 - a. The proposed project would provide extraordinary benefits to the City.
 - b. The increased FAR would allow the project to be designed in such a manner which would mitigate its impacts on surrounding property more effectively than the FAR specified under the district regulations;
 - c. In order to accommodate a use, unique building requirements have imposed (e.g., separate structures for air quality facilities) which require an increase in the FAR over the FAR specified under the district regulations; and/or
 - d. Additional development potential has been transferred within a project from one parcel to another in the same project. And, adequate guarantees such as a deed restriction approved by the city attorney are in place to insure the overall project FAR will not be exceeded.
- (c) **Approving agencies.** ~~Requests for increases up to five percent over the specified FAR shall be considered by the community development director. Increases over five percent and up to fifteen percent shall be considered by~~

~~the planning commission. The city council shall consider requests for increases exceeding fifteen percent. Requests for increases not involving mixed-use developments shall be considered by the community development director. The director may refer such requests to the planning commission or city council when the proposal has the potential to adversely affect traffic level of service or the character/scale of the surrounding area. Requests involving mixed-use developments shall be considered by the city council in conjunction with the review of the mixed-use project.~~

Section 2.

Article 25.2 (Findings), Chapter 2 (Zoning), Title VIII (Planning and Zoning of the Fremont Municipal Code) is proposed to be amended to read as follows:

Article 25.2 (Findings)

Sec. 8-22520. Purpose.

- (a) The purpose of the finding procedure is to provide a general method for making a determination regarding a proposed use which is not specifically listed as a permitted, zoning administrator, or conditional use in one or more districts. Such determination shall be made on the basis of similarity to uses specifically listed.
- (b) This finding procedure also provides a method for making determinations regarding increases in floor area ratio (above the established threshold) and building height, reductions in required yard areas and reductions in required parking.
- (c) The procedures of this article shall not be substituted for the amendment procedure as a means of adding new uses to the list of permitted, zoning administrator permitted, and conditional uses, but shall be followed to determine whether the characteristics of a particular use not listed are sufficiently similar to a listed use to justify a finding that the use should be deemed a permitted, zoning administrator permitted, or a conditional use in one or more districts.

Sec. 8-22521. Application and accompanying material.

An application for a determination that a specific use should be included as a permitted, zoning administrator or conditional use shall be made by the owner of the proposed use or property or by the agent thereof on a form prescribed by the city. The application shall include a detailed description of the proposed use and other such information as required to facilitate the determination.

Where the application is for an increase in floor area ratio (FAR), the application and accompanying application materials shall comply with the requirements outlined in Section 8-22140.5 (Floor area ratio (FAR), increases in).

Sec. 8-22522. Reviewing agency.

- (a) The reviewing agency for findings pursuant to this article shall be as follows:

- (1) Permitted uses: Zoning administrator.
- (2) Zoning administrator uses: Zoning administrator.
- (3) Conditional uses: Planning commission.
- (4) Increase in floor area ratio (FAR), except for mixed-use developments: Community Development Director
- (5) Other zoning standards (e.g., parking, height, setbacks) as provided elsewhere in the Fremont Municipal Code.

- (b) The reviewing agency shall make specific findings that the proposed use is similar to other permitted or conditionally permitted uses on the basis the proposed use has similar characteristics to those uses, or that any increases or decreases in established standards would not have an adverse impact on the site, surrounding properties or the general welfare of the public. Where the application involves a finding for increase in floor area ratio, the Community Development Director shall make specific findings outlined in Article 21.3 (Special Provisions Applying to Miscellaneous Uses).

Sec. 8-22523. Public hearing.

No public hearing need be held unless such a hearing is considered necessary in the public interest. If a public hearing is required, notice shall be given as set forth in section 8-23121.

Sec. 8-22524. Appeals.

Determinations of the zoning administrator or the community development director shall be appealable to the planning commission. Actions of the planning commission shall be appealable to the city council. The procedure for an appeal shall be as outlined under Article 30 of this chapter.